



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0838]

RIN 1625-AA00

Temporary Safety Zone for Explosive Dredging, Tongass Narrows, Ketchikan, AK

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Tongass Narrows. This action is necessary to provide for the safety of life on all navigable waters of the Tongass Narrows, from shoreline to shoreline, within a 500-yard radius of the Pinnacle Rock before, during, and after the scheduled operation between December 16, 2019 and January 31, 2020. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Southeast Alaska or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Coast Guard has shortened the comment period to ensure the public's ability to comment on this proposed rule despite our organization's delayed notification of all details surrounding this operation.

ADDRESSES: You may submit comments identified by docket number USCG-2019-0838 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Jesse Collins, Sector Juneau Waterways Management Division, U.S. Coast Guard; telephone 907-463-2846, email Jesse.O.Collins@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Southeast Alaska
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

Contract Drilling & Blasting LLC notified the Coast Guard that it will be conducting explosive dredging from 30 minutes after sunrise to one hour before sunset between December 16, 2019 and January 31, 2020. The operation will take place approximately 300 yards southwest of Berth II in Ketchikan, AK. Hazards from explosive dredging include concussive forces. The COTP has determined that potential hazards associated with the explosives to be used in this operation would be a safety concern for anyone above the water’s surface within a 500-yard radius of Pinnacle Rock (located at approximately latitude 55°20’37” N, longitude 131°38’96” W).

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters of the Tongass Narrows, from shoreline to shoreline, within a 500-yard radius of Pinnacle Rock before, during, and after the scheduled operation December 16, 2019 and January 31, 2020. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 30 minutes after sunrise to one hour before sunset between December 16, 2019 and January 31, 2020. The safety zone would cover all navigable waters within 500 yards of Pinnacle Rock during explosive dredging operations in the Tongass Narrows located approximately 300 yards southwest of Berth II in Ketchikan, AK. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the daily 35-minute period of explosive dredging.

No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, time-of-day and time-of-year of the safety zone. Vessel traffic would be able to safely transit around this safety zone, south of Pennock Island, which would impact a small designated area of the Tongass Narrows for less than one hour per day when Contract Drilling & Blasting LLC would decide to detonate the explosives. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order

13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than an hour daily for 47 days that would prohibit entry within 500 yards of an explosive dredging operation. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning

Implementing Procedures. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under

ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document,

see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR Part 165 as follows:

PART 165— REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T17-0838 to read as follows:

§ 165.T17-0838 Safety Zone for Explosive Dredging Operations; Tongass Narrows, Ketchikan, AK.

(a) Location. The following area is a safety zone: All navigable waters of the Tongass Narrows, from shoreline to shoreline, within a 500-yard radius of Pinnacle Rock

(located at approximately latitude 55°20'37" N, longitude 131°38'96" W) before, during, and after the scheduled operation between December 16, 2019 and January 31, 2020.

(b) Definitions. As used in this section:

(1) Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Juneau.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Southeast Alaska to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's designated representative by telephone at 907-463-2980 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement officials. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement. This safety zone may be enforced during the period described in paragraph (f) of this section. Contract Drilling & Blasting LLC will have two safety vessels on-scene near the location described in paragraph (a) of this section.

(f) Enforcement period. This section may be enforced from 30 minutes after sunrise to one hour before sunset between December 16, 2019, and January 31, 2020, during explosive dredging operations by Contract Drilling & Blasting LLC.

Dated: November 18, 2019.

Stephen R. White,
Captain, U.S. Coast Guard,
Captain of the Port Southeast Alaska
[FR Doc. 2019-25350 Filed: 11/21/2019 8:45 am; Publication Date: 11/22/2019]